

The Honorable John H. Chun

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC., *et al.*

Defendants.

Case No. 2:23-cv-0932-JHC

**DECLARATION OF EVAN  
MENDELSON IN SUPPORT OF  
MOTION TO MODIFY  
SCHEDULING ORDER**

I, Evan Mendelson, hereby state that I have personal knowledge of the facts set forth below. If called as a witness, I could and would testify as follows:

1. I am a United States citizen and am over eighteen years of age. I am a staff attorney in the Division of Enforcement, Bureau of Consumer Protection at the Federal Trade Commission (FTC). My office address is 600 Pennsylvania Avenue, NW, Washington, DC 20580.

2. Consistent with Local Rule 10(e)(10), orange highlighting has been added to the attachments to indicate excerpts referenced in this declaration. Blue highlighting represents

material that is being filed under seal and will be redacted in the public version of this declaration.

### **THE FTC'S DATA REQUESTS**

3. On September 8, 2023, the FTC sent Amazon its Third Set of Requests for Production of Documents ("RFPs"), which included RFPs Nos. 55, 56, 60, 67, 68, 69, 70, and 73. A true and correct copy of the FTC's RFPs is attached hereto as **Attachment 1**. These RFPs sought data concerning all Amazon Prime subscribers since May 1, 2017.

4. On October 9, 2023, Amazon sent the FTC its Responses and Objections to the FTC's Third Set of RFPs. A true and correct copy of the Amazon's Responses and Objections is attached hereto as **Attachment 2**. Amazon stated that it would produce data responsive to the RFPs (while preserving certain objections) but did not provide a time within which it would make the production. *See id.* at 8-36.

5. On October 26, 2023, the FTC sent Amazon a letter requesting that Amazon provide a production date for its RFP responses. A true and correct copy of the FTC's October 26 Letter is attached hereto as **Attachment 3**.

6. On December 14, 2023, the parties held a virtual meet-and-confer, which I attended. At this meet-and-confer, Amazon told the FTC that it was scoping the availability of responsive data. Amazon proposed that it provide the FTC with the requested data for a subset of Prime members so that Amazon and the FTC could discuss whether the data Amazon intended to provide was fully responsive to the FTC's requests before Amazon went ahead with the full data pull. On the December 14 meet-and-confer, the FTC agreed that this proposal made sense.

Ultimately, the sample datasets provided by Amazon contained data for what appear to be approximately 100 Prime members.

7. On December 22, 2023, the FTC sent Amazon a letter summarizing its understanding from the December 14 meet-and-confer. The FTC wrote: “For the RFPs requesting data regarding Prime members, Amazon has agreed to produce a sample dataset . . . .” Attachment 4 at 6. A true and correct copy of the FTC’s December 22 Letter is attached hereto as **Attachment 4**.

8. In a January 4, 2024 email, Amazon stated that it expected to provide the data sample referenced during the December 14 call and in the FTC’s December 22 letter by January 19.” Attachment 5 at 1. A true and correct copy of Amazon’s January 4 Email is attached hereto as **Attachment 5**. Amazon provided that data sample on January 19. A true and correct copy of Amazon’s January 19 Production Letter is attached hereto as **Attachment 6**.

9. Upon receiving the data sample, the FTC reviewed the material and followed up by email on January 30 to meet-and-confer on certain issues, including “missing or incomplete data” and “the timing of [the] complete data production.” Attachment 7 at 5-6. A true and correct copy of the FTC’s January 30 Email and subsequent correspondence is attached hereto as **Attachment 7**.

10. The parties met-and-conferred on February 8, 2024. I was present for this meet-and-confer. During the meet-and-confer, Amazon counsel told FTC counsel that (a) it would be producing a second sample dataset covering some of the missing information that the FTC identified and (b) it was still investigating whether certain responsive data existed. Amazon also asked, for the first time, whether the FTC would consider accepting a statistical sample of data

instead of the full set of data it had requested. I stated that the FTC would consider whether it would accept a statistical sample instead of a full dataset.

11. On February 15, 2024, the FTC followed up with another letter to confirm that Amazon would produce the second data sample (building on the January 19 100-customer sample) on February 22, 2024. Attachment 8 at 2-3. A true and correct copy of the FTC's February 15 Letter is attached hereto as **Attachment 8**.

12. On February 27 and on March 8, 2024, Amazon provided two separate "updated" 100-customer sample datasets. These datasets contained additional categories of data not contained in the prior datasets. A true and correct copy of Amazon's February 27 Production Letter is attached hereto as **Attachment 9**. A true and correct copy of Amazon's March 8 Production Letter is attached hereto as **Attachment 10**.

13. Again, the FTC promptly reviewed the information and followed up with Amazon on March 15, 2024 to request "additional information to understand and evaluate the completeness of the Updated Data Sample," as FTC counsel was unable to locate some or all the data requested in the RFPs within the provided updated sample. Attachment 11 at 1. A true and correct copy of the FTC's March 15 Letter is attached hereto as **Attachment 11**.

14. On March 22, 2024, Amazon responded to the FTC's March 15 letter. A true and correct copy of Amazon's March 22 Letter is attached hereto as **Attachment 12**. In the letter, Amazon stated it had "repeated[ly] request[ed] . . . confirmation that the FTC [was] even in a position to receive such a large volume of data." Attachment 12 at 2. To the best of my recollection, Amazon had never made any such request. Amazon had asked, during the February 8, 2024 meet-and-confer, whether the FTC would accept the data via cloud transfer rather than

on external hard drives, but had not questioned whether the FTC was “in a position” to receive a large volume of data (nor, at that point, had Amazon even indicated how large the dataset would be). Amazon also asked the FTC whether it would accept “a statistical sample of the requested data,” in lieu of the entire data the FTC had requested. *Id.* Amazon had not mentioned this proposed “statistical sample” to the FTC since the February 8 meet-and-confer.

15. On March 25, 2024, the FTC, in response to Amazon’s March 22 letter, asked Amazon for a meet-and-confer because the FTC “need[ed] additional information about the data,” specifically “the anticipated total size . . . of the complete data set without sampling” and “the extent to which Amazon contends that the data referenced in Nos. 1-9 of [Amazon’s] March 22 letter does not exist or cannot be obtained without undue burden after a reasonable search,” as the FTC was “trying to understand whether there is any responsive data that Amazon is refusing to produce and, if so, what Amazon’s basis is for the burden claim.” Attachment 7 at 3.

16. In response to the FTC’s March 25 email, Amazon stated it was not available for a meet-and-confer until April 2, 2024. *See* Attachment 7 at 1.

17. The parties met-and-conferred on April 2, 2024. I was present for this meet-and-confer. Counsel for Amazon stated on this call that there was some data the FTC had requested but that Amazon had not yet determined whether it could produce.

18. On April 3, 2024, the FTC wrote to Amazon that it would “not accept a statistical sample instead of the full dataset.” A true and correct copy of the FTC’s April 3 Email is attached hereto as **Attachment 13**. The FTC also confirmed the manner in which it preferred to receive the data and asked “when [Amazon] anticipate[s] transferring the data and the final data size, so [the FTC] can plan accordingly.” Attachment 13 at 1-2.

19. On April 12, 2024, the FTC followed up with Amazon with respect to the data, as Amazon had not responded to the FTC's April 3 email. The FTC asked Amazon to "either confirm it does not have responsive data [to certain RFP subparts] or explain Amazon's basis for withholding the responsive data." Attachment 14 at 3. A true and correct copy of the FTC's April 12 Letter is attached hereto as **Attachment 14**.

20. On April 23, 2024, the FTC followed up with Amazon to ask "when and how Amazon anticipates transferring the final dataset to the FTC, as well as the expected size and format of the data." Attachment 13 at 2.

21. On April 26, 2024, Amazon stated it estimated the full dataset will "include data for approximately 250-300 million customers" and will "be approximately 100 TB." A true and correct copy of Amazon's April 26 Letter is attached hereto as **Attachment 15**. Amazon did not provide a production date for the data.

#### **THE FTC'S REQUEST TO MODIFY THE EXISTING SCHEDULE**

22. On April 17, 2024, the FTC reached out to Amazon and proposed filing a Joint Motion to amend the schedule, including because "Amazon has not produced the complete data requested in the FTC's Third Set of RFPs" and "Defendants have not answered the Amended Complaint (which will necessarily affect the scope of discovery)." Attachment 16 at 8-9. A true and correct copy of the FTC and Amazon's email chain regarding the case schedule is attached hereto as **Attachment 16**.

23. The parties met-and-conferred on May 1, 2024. I was present for this meet-and-confer. The FTC again asked Amazon for an anticipated production date for the data. Amazon

was unable to provide one. The parties were unable to reach an agreement on a proposed new schedule. Attachment 16 at 1.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 13, 2024



Evan Mendelson